

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAMON BUYCK and JUANITA MARTIN, Co-  
Personal Representatives of the ESTATE OF  
DESEAN EUGENE BUYCK,

UNPUBLISHED  
November 25, 2003

Plaintiffs-Appellants,

v

WEDGWOOD CHRISTIAN YOUTH AND  
FAMILY SERVICES, INC.,

No. 235777  
Kent Circuit Court  
LC No. 00-11392-NO

Defendant-Appellee.

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Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's grant of summary disposition to defendant. We vacate the trial court's order and remand for further proceedings consistent with this opinion.

**I. Facts and Procedural History**

DeSean Eugene Buyck became a temporary court ward on July 1, 1996 and, thereafter, lived as a resident of Wedgwood Christian Youth and Family Services, Inc. Plaintiff Damon Buyck is DeSean's biological father whose parental rights were terminated on August 28, 1997. The parental rights of Markeeta Martin, DeSean's biological mother, were also terminated. Pursuant to the termination proceedings, DeSean was committed to the Michigan Children's Institute of the Family Independence Agency (FIA). FIA contracted with Wedgwood for the placement and treatment of DeSean. A foster care worker, Denise Terry-Smith, signed a "Parent/Guardian Admission Consent" that contained a provision that gave Wedgwood permission to include DeSean in special trips and outings, including trips out of Kent County or Michigan. Terry-Smith initialed the following statement on the form:

I understand that Wedgwood will provide/arrange for supervision on these trips. I  
AGREE NOT TO HOLD WEDGWOOD, OR ANY REPRESENTATIVE  
THEREOF, RESPONSIBLE OR LIABLE FOR ANY CLAIMS, LIABILITIES,  
ACCIDENTS OR INJURIES WHICH MAY RESULT DURING SUCH TRIPS.  
**I HAVE READ, UNDERSTAND, AND AGREE TO THIS ITEM.**

On August 3, 2000, DeSean drowned during a Wedgwood fieldtrip to Holland State Park. Following DeSean's death, the Wayne County Probate Court appointed Damon Buyck and Juanita Martin, Markeeta Martin's grandmother, as co-personal representatives of DeSean's estate. Damon Buyck and Juanita Martin filed this wrongful death action on November 14, 2000, and alleged that Wedgwood breached its duty of care because the staff allowed DeSean to enter the water despite his inability to swim, failed to heed warnings about hazardous water conditions, failed to provide adequate or experienced supervision, and allowed DeSean to go outside designated swimming areas.

Thereafter, Wedgwood filed a motion and asked the trial court to declare that, because the parental rights of both Damon Buyck and Markeeta Martin were terminated, neither they nor any biological relative may inherit from DeSean's estate. In response, plaintiffs argued that DeSean's maternal and paternal grandparents and four half-siblings are entitled to recover damages under the wrongful death act. Plaintiffs also asked the trial court to defer judgment on the motion until the Wayne Circuit Court could review and decide whether Damon Buyck's parental rights were improperly terminated.

Wedgwood also filed a motion for summary disposition and argued that the estate's claim is barred by the pre-injury release signed by Terry-Smith. In response, plaintiffs argued that, under Michigan law, a parent or guardian has no authority to waive or release a claim by or against a child. In a written order entered on June 11, 2001, the trial court granted defendant's motion for summary disposition on the grounds that the action is barred by the release.

## II. Standards of Review

Defendant brought this motion pursuant to MCR 2.116(C)(7) and (C)(8). "We review a trial court's grant or denial of summary disposition de novo." *Diehl v Danuloff*, 242 Mich App 120, 122; 618 NW2d 83 (2000). "Summary disposition of a plaintiff's complaint is proper where there exists a valid release of liability between the parties." *Wyrembelski v City of St. Clair Shores*, 218 Mich App 125, 127; 553 NW2d 651 (1996), quoting *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988). When reviewing a motion under MCR 2.116(C)(7), "[t]his Court considers the pleadings, affidavits, depositions, admissions, and documentary evidence filed or submitted by the parties to determine whether the claim is barred by law." *Blazer Foods, Inc v Restaurant Properties, Inc*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No 232489, issued 10/30/03), slip op at 3. "A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone, and the motion may not be supported with documentary evidence." *Morris & Doherty, PC v Lockwood*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No 235451, issued 10/7/03), slip op at 3, n 3.

## III. Analysis

We hold that the trial court's grant of summary disposition to defendant was both erroneous and premature.

The trial court decided the motion on the basis of a release before making the factual and legal determination whether an FIA case worker has the legal or factual authority to compromise the future claims by DeSean or his estate. While we recognize that DeSean was committed to the Michigan Children's Institute, we have serious concerns about the nature and extent of the

record evidence on the position and authority of Terry-Smith. We conclude that the record must be developed on issues such as whether Terry-Smith was court appointed or otherwise permitted to act as a legal guardian to DeSean; the legal and factual relationship between the Terry-Smith, the Children's Institute and Wedgwood; and, importantly, how such authority, if it exists, would permit Terry-Smith to waive DeSean's prospective claims. Contrary to the tenor of the briefs and proceedings below, this case does not simply present the question whether a "parent" may release the claims of his child. This matter involves complex statutes and factual questions concerning state child care agencies and the factual and legal capacity to bind a minor child and, ultimately, his estate. We are not convinced, by the record presented, that this was adequately explored below, particularly with regard to who had the authority and the scope of that authority in this case. Accordingly, we find it necessary to vacate the trial court's order as premature and remand for the development of a more complete record.

In addition to and in conjunction with the determination of who may waive the rights of DeSean is this question -- who may bring claims on behalf of DeSean's estate? A decision regarding the legal effect of the release is also premature because it was made prior to the threshold question of whether the plaintiffs have any standing to bring this action. The record reflects that both legal and factual issues remain in dispute regarding whether Damon Buyck or Juanita Martin may represent the interests of DeSean's estate, whether any family members exist who may inherit from DeSean's estate or recover under the wrongful death act, or whether and who is the proper party in interest to assert claims on behalf of DeSean. "To have standing, a plaintiff must demonstrate a legally protected interest that is in jeopardy of being adversely affected and allege a sufficient personal stake in the outcome of the dispute to ensure that the controversy sought to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution." *Donaldson v Alcona County Bd of County Road Com'rs*, 219 Mich App 718, 722; 558 NW2d 232 (1997). Further factual and legal development is clearly necessary to establish standing before the important substantive issues in this case are addressed.

Because further factual and legal development is needed regarding both of these critical issues, we vacate the trial court's order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Patrick M. Meter

/s/ Donald S. Owens